

Agricultural Cooperatives

A Guide to Complying with
Missouri Securities Laws



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Secretary of State

Organizing an Agricultural Cooperative

An agricultural cooperative is an association of people who join together to engage in the production of agricultural products. Missouri's agricultural cooperatives often sell, process and ship its members' agricultural products, equipment and supplies. These cooperatives may also gain financing for the activities and materials the cooperative is involved with or uses.

Farmers seeking to organize cooperatives are usually seeking the benefits of economies of scale. Many farmers with common interests may organize through cooperatives and strengthen their market power. Numerous Missourians in the agriculture industry are also adding value to their products through the efforts of cooperatives.

Participants in a cooperative (often referred to as co-op) generally join by purchasing membership interests from either the cooperative itself or from another member. When someone offers or sells membership interests in a cooperative, that offer or sale is covered by the Missouri Securities Act of 2003 (the "2003 Act"). This is because the 2003 Act defines a "security" to include membership interests in a cooperative. Like any other securities in the state, membership inter-

ests in a co-op are regulated by the Securities Division of the Missouri Secretary of State's Office.

This pamphlet summarizes the ways that a Missouri cooperative or its members can legally offer or sell membership interests in that cooperative. This pamphlet is only for general informational purposes. You are encouraged to consult with your attorney and review Missouri's securities laws and regulations before offering or selling securities.

Offering or Selling Membership Interests in Missouri

Under Missouri law, all cooperative memberships must be either registered with the Missouri Securities Division, exempt from registration or qualify as a “federal” covered security.

Membership Interests Registered with the Missouri Securities Division

If the cooperative wants to offer or sell its shares only in Missouri, it can file the necessary forms to register its membership interests with the Missouri Securities Division. If the cooperative wants to offer membership interests in other states as well, it must register under the federal

Securities Act of 1933 as well as Missouri's 2003 Act. In either case, the registration statements are generally very comprehensive and the cooperative should consult with professionals experienced in securities law to complete the necessary paperwork.

After it registers its membership interests, the cooperative or its members can offer or sell those interests to others.

Membership Interests Exempt from Registration

N**onprofit Cooperatives.** If a cooperative has been organized as a nonprofit corporation, then the cooperative or its members can offer or sell membership interests to other members of that cooperative without registration. However, if a nonprofit cooperative wants to offer or sell its interests to nonmembers under this exemption, it must either register or file a notice of that offering or sale with the Securities Division.

(Nonprofit cooperatives interested in doing so should use the information at the back of this pamphlet to contact the Securities Division for more information.) After the Commissioner of Securities approves the notice, a nonprofit cooperative or its members can offer or sell the interests to nonmembers.

New Generation Processing

Entities. Some cooperatives qualify as “new generation processing entities” under Missouri law. Generally speaking, a new generation processing entity is a Missouri business that owns or operates a development facility or renewable fuel production facility. To qualify as a new generation processing entity, the business must be approved by the Missouri Agricultural and Small Business Development Authority. They can be reached by mail at 1616 Missouri Boulevard, Jefferson City, MO 65102 or by phone at (573) 751-2129.

Membership interests in a qualified new generation processing entity can be offered or sold without registration if that entity files a notice with the Securities Division. This notice consists of a specific request for an exemption and the appropriate forms are available on the Securities Division's website at www.sos.mo.gov/securities.

The Limited Offering Exemption.

The 2003 Act also allows a cooperative to offer or sell membership interests without registration to a limited number of people if the cooperative follows the following statutory requirements:

- Only 25 people may purchase the membership interests in Missouri within a 12-month period.

- The cooperative can only offer or sell the membership interests to those with whom the cooperative has a preexisting, substantive relationship prior to the offer or sale.
- Only those broker-dealers and agents registered in Missouri can receive commissions or remuneration for soliciting a potential purchaser.
- The purchasers must be buying membership interests with the desire to own them as investments, not for any immediate resale value.

Individual Members Selling Their Unregistered Membership

Interests. The 2003 Act allows an individual member of a cooperative to offer or sell his or her unregistered membership interests if that offer or sale is “isolated.” (Cooperatives themselves cannot use this exemption to offer or sell their membership interests.) Generally, an offer or sale is “isolated” if it only happens once or twice. If the offer or sale qualifies for this exemption, then the member would not have to register or make any filing with the Securities Division.

Membership Interests as “Federal Covered Securities”

Some membership interests qualify as “federal covered securities.”

Federal covered securities are securities that have been exempted from a state's registration requirements by federal law. If a cooperative's membership interests qualify as federal covered securities, then the cooperative or its members can offer or sell those interests without registering with or sending a notice to the Securities Division.

For instance, the Internal Revenue Service exempts some "farmer's cooperatives" from paying income tax to the federal government. If a Missouri cooperative qualifies for this tax exemption from the IRS, then that cooperative's membership interests qualify as federal covered securities.

Important Notes Regarding Exemptions

The Cooperative Must Prove Any Exemption Applies. Even though the 2003 Act provides some exemptions for offering or selling securities, the person selling the shares bears the burden of proving that an exemption applies to the transaction. If challenged to prove that an offer or sale was exempt from registration under the 2003 Act, it will be the seller's responsibility to present evidence that the offer or sale in fact qualified for the exemption. If unable to prove this, the seller could be liable for payment of monetary penalties or restitution.

No Exemption from the Antifraud

Laws. Although Missouri laws exempt some offerings and sales from the registration process, there is no exemption from the antifraud laws. The antifraud laws in the 2003 Act make it unlawful for anyone to commit any act that amounts to fraud in the course of offering or selling a security. When offering or selling securities, a person can commit fraud by “lying about a material fact or not disclosing a material fact to the potential buyer.” Generally, a fact is “material” when it would likely have an effect on the potential buyer’s decision whether to purchase the security. A person who violates the antifraud laws can be criminally prosecuted or civilly sued by the buyer.

Although not required, a written document prepared by an experienced securities attorney may be worthwhile protection.

Assistance from the Secretary of State

The Missouri Securities Division is a division of the Office of the Secretary of State. The staff of the Securities Division is available to answer questions you may have concerning agricultural cooperatives, securities laws and other securities issues between the hours of 8 a.m. to 5 p.m., Monday through Friday.

For more information, contact:

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